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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re JAMAR S., a Person Coming Under the Juvenile
Court Law.

C073394

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD225799)

Plaintiff and Respondent,

v.

L.G. et al.,

Defendants and Appellants.

Mother L.G. and father J.S. appeal from the juvenile court's orders terminating their parental rights to minor Jamar S. and freeing him for adoption. (Welf. & Inst. Code,

§§ 366.26, 395.)¹ They contend the juvenile court erred in finding that no exception to adoption applied.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because appellants contest the sufficiency of the evidence, we view the facts in the light most favorable to the juvenile court's order and presume in support of the order the existence of every fact the court could reasonably deduce from the evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*)) Applying that standard, we set forth portions of the juvenile court's oral recitation of the factual background stated at the section 366.26 hearing, since the facts contained therein are supported by the record and were relied on by the juvenile court in making its order.

"Jamar was first separated from his mother[, L.G.,] in September of 2006 when he was about two and a half years old.^[2] [L.G.] arranged for Jamar and [his half brother] Anthony to live with the [R.'s, who are Jamar's maternal great-aunt and uncle]. Subsequently Ms. [R.] was diagnosed with multiple sclerosis. The children then went to a nonrelative extended family member. This is an important fact, as, in essence, [L.G.] has not parented Jamar since 2006 on a full-time basis except a short three-week period followed by a court removal.

"The original petition was in April of [2007]. It was amended to allege physical abuse by Tony Anderson, mother's then-boyfriend, whom she subsequently later married. Of note was the fact that Jamar hit his head when he was pushed by Mr. Anderson trying to protect [L.G.]. This is an important fact even now, as the information in the expert

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Jamar was actually three and a half years old, as he was born in March 2003.

reports discusses Jamar's need to protect his mother, and this gives light on where it stemmed from.

"In the May jurisdiction report we learned that the mother had been extradited to Nevada but was working on parenting and various other services. She in that report admitted the domestic violence with [J.S.], the biological father. The mother had a number of programs available to her. And in subsequent addendums we also learned from Anthony about the physical abuse by Mr. Anderson and Anthony's reports of abuse of Jamar and fears of Jamar that the mother would get back together with Mr. Anderson. Jamar confirmed domestic violence and abuse at that time. And at that time [L.G.] was in denial and denied physical violence. [L.G.] later admitted she was not honest and planned to marry Mr. Anderson after his release, which she did. . . .

"[L.G.] then engaged in services, completed victim awareness, was appearing to make significant progress. Jamar at that time was struggling emotionally with temper tantrums and struggling in foster care.³ [L.G.] completed Parent Child Interaction Therapy and was very committed and enthusiastic about reunification. She was remorseful and motivated to comply with CPS [Child Protective Services]. She had set behind her the minimizing of the domestic violence, and the Court found sufficient evidence to return the children at the [section] 366.22 hearing. A mere three weeks later, the Department [Sacramento County Department of Health and Human Services] filed a subsequent and a [section] 387 petition. During a probation search drugs were found. The children were unsupervised. And there was a violation of the no-contact order with Mr. Anderson. Of note in that January 9th jurisdiction report was [L.G.] indicating that the children were okay with Mr. Anderson being in the home. [¶] . . . [¶]

³ By that point, Jamar and Anthony had been removed from two foster homes at the foster parents' requests due to behavior problems.

“Visits stopped for period of time as [L.G.] had a warrant for grand theft. Visits resumed, but the reunification period had run. The recommendation was for guardianship due to a substantial positive bond with the mother. In July of [2009] guardianship was granted with Jamar and Anthony at the [R.’s] home. Jamar was taking psychotropic medication for hyperactivity, temper tantrums, defiant, impulsive, and was difficult to calm [*sic*]. At that time the mother was having frequent, regular visits Tuesday, Wednesday and Thursday. She was helping with school. She had unsupervised weekends so long as there was no contact with Mr. Anderson. In fact, I believe it was Mr. [R.] indicated that they were looking to her as a visitor and a nanny.

“In May there was a [section] 388 [petition] to terminate dependency as Kin Gap funding was satisfied. A short, I believe, ten days later, in May of 2010, approximately May 27, there was a relative consent for removal and 387.^[4] The [section] 366.3(a) report also indicated that Mr. [R.] had learned that [L.G.] was allowing Mr. Anderson once again to have contact with Jamar and discontinued unsupervised contact. [L.G.] then once again started services on her own. Jamar was still having behavioral problems in school. However, he was seeming to settle into a foster home.

“Anthony and Jamar were initially placed together following the request for the relative consent for removal. The Department was committed to trying to keep the boys together due to their relationship. However, Anthony desired to return to the [R.’s].^[5] And in October 2010, the progress report referenced by the mother, it was clear that the Department tried to save the guardianship. The [R.’s] were marginally compliant with the corrective action plan and felt unable to meet Jamar’s needs. The Department reported Anthony was, quote, intensely bonded to the [R.’s], end of quote, and wanted

⁴ The R.’s requested the removal of the minors.

⁵ In June 2010, the R.’s requested that Anthony be returned, but refused to have Jamar returned.

to return to their care. And it was noted that the bond to Jamar was secondary to the attachment Anthony had to the [R.'s].

“The Department was obviously committed to trying to maintain the sibling relationship. As they stated, to ensure the relationship between Anthony and Jamar supported the Department need to keep oversight [*sic.*]. Anthony returned to the [R.'s], and Jamar went back to foster care. Here the Department was focused on Anthony's best interests. The [R.'s] kept Anthony, and Jamar was essentially rejected back to foster care. The permanent plan was long-term placement with a goal of guardianship or adoption. The Department pursued as is required by law permanency for Jamar, in that in December 2010 there was a request for photo listing to find an adoptive home.

“In the April 2011 administrative review/subsequent review report it reiterates the reasons Jamar was in foster care It also describes either through that report or the attachment [L.G.] engaging in inappropriate conversations with Jamar, discussing the case with Jamar . . . and was promising him he will be returning home. Jamar displayed immature behavior following visits and displayed little respect to mother, raises his voice to her. Mother was directed not to discuss the case. Not surprisingly with [L.G.] discussing the case and the promise of return, Jamar did not want to move to permanency. He was also working through the failed guardianship and wanted things to stay the same.

“The April 15th, 2011 administrative review report set forth barriers to reunification with [L.G.], stating she continued to have difficulty understanding her live-in boyfriend's physical abuse of her children and then her marriage to him, the violation of court orders and an unwillingness to acknowledge her action[s] negatively impacting the ability to reunify. Jamar's case was then transferred to the Cap Kids for purposes of intensive home finding. It reiterates that reunification was not viable, discusses Jamar's psychotropic medication regimen and that the medications were of benefit to Jamar.

“The Brighter foster home report of February 2011 through May 2011 indicates visits between mother and Jamar showed that Jamar is demanding and aggressive to [L.G.]. It does note that [L.G.] brings appropriate games and snacks, but she requires redirection, making . . . comments to Jamar such as, ‘Who do you want to live with; I’m sorry you’re in foster care’ and asks Jamar to say he loves her back. Jamar is very emotional after visits but transitions well. This does not show a healthy or positive visit or parent/child relationship at this point.

“In school Jamar has good citizenship. The social worker reports some sexualized behavior and complicating factors, that the uncle allowed unauthorized contact with mother and other family members. Jamar continues to express a desire to return home. It notes that [L.G.] recently separated from Mr. Anderson. The social worker expresses concern regarding the duration and the ability to assess risk to her children. Subsequently, there was a notice of out-of-county placement for adoption. There was an objection. [L.G.] filed for divorce the next day. The Department matched Jamar with a perspective *[sic]* adoptive parent, and the pre-placement visits were going well.

“In January of 2012 the Court granted the out-of-county placement. Six days after the out-of-county placement [was] granted [L.G.] filed her Section 388 [petition] for return or re-instatement of services. After a lengthy contested proceeding, the Court did deny the [section] 388 but did order an evaluation as Jamar appears to still be hoping for reunification. And the Court needed additional information about moving forward with consideration of adoption since Jamar expresses love for his mother and his desire to live with her. And that has been consistent since the early days of the case. [L.G.] was also making progress in counseling and services.

“[O]n March 23rd, 2012 the post permanency report notes Jamar is meeting developmental milestones. He is having some behavioral issues in school, missed his mother. He has trouble sleeping. He’s in therapy and holding out hope for reunification; however, if that’s not successful, then he expresses he would like to stay with his new

foster father, [Mr. P.,] who ultimately became the de facto parent. He is dealing with boundary issues, the removal and was initially anxious about the move to the foster father's home but then became excited. The foster father/soon to be de facto parent indicated the transition went well and that Jamar was less worried about his mother.

“ . . . [L.G.] is demonstrating appropriate behavior at visits, although Jamar's reported to [be] saying he is bored and plays with his iPad and phone. The issue of loosening of supervision of mother's visits is considered, but a repeat of the prior unauthorized contact is still a concern. Jamar tells Mr. [P.] that his mother is leaving the man in order to get him back. And if he can't go home, he would stay in the current home. Mr. [P.] file[d] for de facto status in May of 2012.

“The Court also received that UC Davis CAARE Center report it ordered. The report was quite late, and it was a long evaluation. It evaluated [L.G.]'s potential for reunification and ability to benefit from services. There was the interview and observation with Jamar and mother, information that Jamar wants to live with his mother and father. He admits he has seen his father one time. He also states he wants to get Anderson out of the house so he can be with his mom. Wants to stay with his mom so she does the right stuff.

“This presents to the Court a very parentified child. He is being the parent protector to his mother. That report also notes Jamar believed Anthony had a choice to take him back to the [R.'s] and refused to do so. This gives some insight into Jamar's feeling about the sibling relationship. The evaluation was lengthy and covered topics the Court did not specifically request and interviewed family and family friends beyond what the Court expected, some of which the Court did not find that salient.

“However, in the final analysis it is rather consistent with the reports and conclusions of Dr. Nicholas. The UC Davis report and Dr. Nicholas' report both carry a great deal of weight with the Court because -- and particularly with the UC Davis report it has a significant amount of information about Jamar with a large number of

quotes of Jamar's statements. It also contains his functioning and his comments, which are telling of his emotional state and perspectives . . . and Dr. Nicholas' report and are of key interest to the Court in assessing the issues. The final summary of the UC Davis report opines, 'It is not detrimental to terminate parental rights.' The report notes that the overwhelming sense of responsibility Jamar feels to his mother and quotes Jamar as saying, 'I could stay with my mom so she could do the right stuff.' They note this is developmentally inappropriate and creates a high level of uncertainty and sadness. The UC Davis report, like Dr. Nicholas' report, notes that Jamar wants to live with his mother and father. And it is based largely on wishful thinking, not on the quality of the parent/child relationship, particularly since Jamar has virtually no relationship with his father.

"Next, we do have some information . . . from Dr. Rosenbledt, who treated Jamar since February 2012. She reports on Jamar's treatment progress and states, 'It is critical the Court understand that another major traumatic change in the stability of living in the home that currently provides love, security, stability, as well as opportunities for personal, cognitive and socioemotional growth may cause irreparable psychological damage to Jamar.'

"Dr. Nicholas' evaluation, in summary, was well written and also very thorough and contained an observation of Jamar with his brother, which was quit[e] helpful, and mother, review of records, interviews with the mother and Mr. [P.], collateral contacts with Jamar's therapist, Dr. Rosenbledt, the current[] therapist. Dr. Nicholas concluded that Jamar will suffer emotionally if contact with [L.G.] is terminated. UC Davis said, Jamar would suffer sadness, anger and frustration, but UCD said that would be short-term.

“Dr. Nicholas’ report says if the relationship with the mother is cut off, the psychological harm would be significant and last one to two years.⁶ UCD says, Jamar is at a higher risk for suffering long term consequence should he be denied a stable, consistent and permanent placement.⁷ Dr. Nicholas reports . . . that a failed effort at further reunification with his mother would be devastatingly severe^[8] and concludes, as to Jamar’s present emotional and psychological need, quote, ‘The pressing unresolved need of Jamar is to resolve the reunification slash adoption issue one way or the another’ [¶] . . . [¶]

“The [section] 366.26 report prepared by the social worker describes Jamar’s response to his mother’s visits, the comments that he’s bored, and that Jamar’s having a hard time following mother’s directives, periods of difficulty sleeping, difficulty also following foster parent’s directives, getting into trouble at school, but that behavior has decreased. It used to be a week before and after mother’s visits, now only lasts two days before and after visits.^[9] It’s noted Jamar separates from the visits without incident. The social worker reports that contact with the therapist, she opines Jamar knowing that he is

⁶ Specifically, Dr. Nicholas wrote: “If parental rights are terminated and Jamar is subsequently cut off from any contact with mother, the psychological/emotional harm to Jamar will be significant and will last for 1 to 2 years or possibly longer”

⁷ Specifically, the U.C. Davis report reads: “The evaluators believe that Jamar’s expected negative reactions to another separation from [L.G.] will be time-limited. Indeed, Jamar is at higher risk for suffering long-term consequences should he be denied a stable, consistent, and permanent placement.”

⁸ Specifically, Dr. Nicholas wrote: “In regard to psychological and emotional effects on Jamar of a further failed reunification with mother: the psychological and emotional effects would be devastatingly severe. I expect that, if this occurred, Jamar would regress into a pattern of oppositional and aggressive behavior reflecting his anger and frustration at the world related to the failure.”

⁹ Visits between Jamar and his mother were reduced to two hours monthly in March 2012.

to be adopted has brought a sense of calm and hope about his future. This is an important observation by his therapist. Jamar's behavior improved also [*sic*] is reported after the October hearing.

"There is nothing negative about the actual visits as far as [L.G.]'s behavior. She is described as engaging, and the social worker describes the relationship with mother and sibling as close. The social worker concludes, Jamar will benefit from the stability adoption will provide. The [section] 366.26 addendums address [J.S.] and the report by Dr. Nicholas. The new information does not change the Department's recommendation."

The juvenile court found Jamar was likely to be adopted by his current prospective adoptive parent. The juvenile court then considered both the beneficial parent-child relationship and the beneficial sibling relationship exceptions to adoption. Rejecting the application of either exception, the juvenile court terminated parental rights.

DISCUSSION

At a hearing under section 366.26, once the court finds by clear and convincing evidence that a minor is likely to be adopted, the court must terminate parental rights and order the minor placed for adoption unless "[t]he court finds a compelling reason for determining that termination would be detrimental" because of one of the statutorily enumerated exceptions. (§ 366.26, subd. (c)(1)(B).) The parent has the burden of establishing an exception to termination of parental rights. (Cal. Rules of Court, rule 5.725(d)(4); *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809 (*Zachary G.*); see *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373.)

Mother and father here contend that the beneficial parental relationship exception applies. Father also contends that the beneficial sibling relationship exception applies.

I. Standard of Review

Courts of review have affirmed a trial court's ruling regarding the exceptions to adoption when supported by substantial evidence. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947 (*L.Y.L.*); *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *Zachary G.*, *supra*,

77 Cal.App.4th at p. 809.) While mother and father appear to advocate for application of the substantial evidence standard, respondent notes authority indicating that the appropriate standard of review is actually a two-pronged hybrid where the substantial evidence standard applies to the determination of the existence of a beneficial parental or sibling relationship and the abuse of discretion standard applies to the determination of whether the benefit of the relationship is outweighed by the benefit of adoption. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) We find no error applying either standard.

II. Beneficial Parental Relationship Exception to Adoption

Mother and father contend the juvenile court erred by failing to find an exception to adoption based on Jamar's relationship with his mother. We disagree.

The beneficial parental relationship exception applies when "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) To prove that the beneficial parental relationship exception applies, the parent must show there is a significant, positive emotional attachment between the parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) And even if there is such a bond, the parent must prove that the parental relationship " 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' " (*In re S.B.* (2008) 164 Cal.App.4th 289, 297, quoting *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord, *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1345.) " 'In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.' " (*L.Y.L.*, *supra*, 101 Cal.App.4th at p. 953, quoting *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption."

(*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

Here, the juvenile court acknowledged that Jamar is bonded to and loves his mother. The court also acknowledged that Jamar would like to live with his mother and that he may sustain significant psychological harm for one to two years if his relationship with his mother is terminated. However, as the juvenile court explained, “UCD says, Jamar is at a higher risk for suffering long term consequence should he be denied a stable, consistent and permanent placement. Dr. Nicholas reports . . . that a failed effort at further reunification with his mother would be *devastatingly* severe and concludes, as to Jamar’s present emotional and psychological need, . . . ‘The pressing unresolved need of Jamar is to resolve the reunification slash adoption issue one way or the other’ ” (Italics added.) Moreover, the UC Davis CAARE Center evaluator concluded that while discontinuing Jamar’s relationship with his mother is likely to result in short-term negative reactions, it would not be detrimental to his long-term emotional or physical well-being or have a long-term negative impact on his personal and relationship functioning.

Additionally, with respect to the nature of Jamar’s relationship with his mother, the juvenile court noted that Jamar has a hard time following her directives and is bored during visits. And after visits, he has periods of difficulty sleeping, difficulty following his foster parent’s directives, and getting in trouble at school -- although these problems have decreased since he has been in his current potential adoptive home. Jamar separates from his mother without incident and Jamar’s therapist opines that Jamar knowing he is to be adopted has brought a sense of calm and hope about his future.

In sum, the experts agree that stability and permanence is *paramount* for Jamar. Mother argues that guardianship would provide that stability and permanence, without risking the discontinuation of continued contact between her and Jamar. She argues that guardianship “provides all of the necessary and desired stability and permanence that a child requires” and provides a permanent placement that is “not at risk or insecure.” However, guardianship “is ‘not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.’ [Citation.]” (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728.) Indeed, Jamar has already suffered a failed guardianship -- refuting mother’s argument that such an arrangement is sufficiently stable and permanent. The juvenile court recognized this circumstance when it noted that prior permanency options had “ended in disaster for Jamar’s emotional well-being.” The juvenile court was entitled to conclude on this record that only adoption, as the preferred disposition, would promote the best interests of Jamar and provide him the stability he so desperately needs.

We conclude the juvenile court reasonably found that Jamar’s interest would best be served by adoption and that substantial evidence supports the determination that the beneficial parental relationship exception to adoption did not apply.

III. Beneficial Sibling Relationship Exception to Adoption

Father also contends the juvenile court erred by failing to find an exception to adoption based on Jamar’s relationship with his half brother, Anthony. Again, we disagree.

Under section 366.26, subdivision (c)(1)(B)(v), the juvenile court may find a compelling reason for determining that termination of parental rights would be detrimental to the minor where “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest,

including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption."

Here, there was evidence that Jamar enjoys sibling visits but there was not much interaction between the siblings observed when they visited in conjunction with mother. The siblings shared abuse and neglect history, and shared placement experiences until they were separated in 2010. But thereafter, Jamar faced the termination of guardianship, additional foster care and uncertainty, and ultimately the successful placement in his potential adoptive home on his own. While there was some evidence that Anthony felt bonded to Jamar, there was little evidence that the relationship was of significant importance to Jamar's well-being. On the other hand, there had been substantial improvement in Jamar's behavior since being placed in his current stable and structured home, apart from his sibling. Thus, while there may be some detriment to severing the sibling bond, father did not meet his burden of showing that it outweighed the many benefits to Jamar of a stable and permanent home.

Father's arguments that losing the sibling bond will cause Jamar "irreparable harm" and that Jamar "may not be capable of demonstrating his bond to Anthony the way a child free of [Jamar's emotional and psychological] problems may" are simply unsupported by evidence in the record. And contrary to father's argument, the fact that Jamar spoke of returning to live with Anthony or that the social worker, consistent with the Department's responsibilities, had previously attempted to preserve the sibling bond, does not establish that severing the sibling bond would cause such detriment to Jamar as to outweigh the benefits of adoption at this point. The juvenile court reasonably found that Jamar's interest would best be served by adoption and substantial evidence clearly supported the juvenile court's finding that the sibling exception did not apply.

Moreover, as the juvenile court noted, "[t]here was little evidence presented that the termination of parental rights would actually interfere in the sibling relationship."

Anthony is not a dependent of the court.¹⁰ Nonetheless, the siblings had fairly consistent visitation in the three years following their separation, although Anthony's guardians occasionally prevented visits. However, Anthony will be 18 in 2015 and will make his own decisions regarding visitation. Jamar's prospective adoptive parent is willing to maintain the sibling relationship as long as it is beneficial to Jamar. Although the juvenile court did not rely on this circumstance, we nevertheless note that the termination of parental rights does not necessarily foreclose the continuation of the sibling relationship where the adoptive parents are willing to allow visitation. (See *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014; see also *In re C.B.* (2010) 190 Cal.App.4th 102, 131, fn. 8.)

DISPOSITION

The orders of the juvenile court are affirmed.

MURRAY, J.

We concur:

BLEASE, Acting P. J.

BUTZ, J.

¹⁰ Father admits that it is the Department's maintenance of supervision of *Anthony's* guardianship that may be the pivotal factor in whether the siblings visit.